



05 DEC 2007

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In re Application of
McNICHOLL *et al*
Application No.: 10/538,675
PCT No.: PCT/US2003/005347
Int. Filing Date: 09 December 2003
Priority Date: 09 December 2003
Attorney Docket No.: IPG-051112
For: A DEVICE FOR TEMPORARILY
SHIELDING THE END OF A
SURGICAL INSTRUMENT SHARP

DECISION

This decision is in response to the "Petition to Vacate Status of Abandonment Under 37 C.F.R. §1.181" filed 23 October 2007. No fee is required.

BACKGROUND

On 09 June 2005, applicant filed a transmittal letter (Form PTO-1390) for entry into the national stage in the United States under 35 U.S.C. 371 of international application, PCT/US2003/005347.

On 15 June 2006, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed because applicant failed to provide the full U.S. Basic National Fee by thirty months pursuant to 37 CFR 1.495(b)(2).

On 23 October 2007, applicant filed the subject response.

DISCUSSION

In order to enter the national stage, an applicant must meet the requirements of 37 CFR 1.495, which states, in part:

- (a) The applicant in an international application must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. The thirty-month time period set forth in paragraphs (b), (c), (d), (e) and (h) of this section may not be extended . . .

(b) To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of thirty months from the priority date:

(2) The basic national fee (see § 1.492(a)).

In this case, the thirty-month time period for PCT/US2003/005347 expired on 09 June 2006. As such, the national stage papers were timely submitted. Moreover, the transmittal letter signed by Mr. King III authorized the appropriate fees to be charged to Deposit Account No. 50-2131. A review of USPTO financial records show that the appropriate fees were indeed charged on 09 June 2006.

Accordingly, the above-captioned application should not have been abandoned pursuant to 37 CFR 1.495(b)(2).

CONCLUSION

For the reasons discussed above, applicant's petition to withdraw the holding of abandonment is GRANTED.

The Form PCT/DO/EO/909 mailed 15 June 2006 is hereby VACATED.

It is also noted that the first named applicant and priority date were listed erroneously on the Form PCT/DO/EO/909 mailed 15 June 2006.

This application is being forwarded to the Office of Patent Application Processing for continued processing.



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